

ESTTA Tracking number: **ESTTA540202**

Filing date: **05/28/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Motus Financial, Inc.
Granted to Date of previous extension	05/25/2013
Address	100 Wilburn Road, Suite 209 Sun Prairie, WI 53590 UNITED STATES
Attorney information	Erin R. Ogden Murphy Desmond, SC 33 E. Main St., Suite 500PO Box 2038 Madison, WI 53703 UNITED STATES ip@murphydesmond.com

Applicant Information

Application No	85759421	Publication date	03/26/2013
Opposition Filing Date	05/28/2013	Opposition Period Ends	05/25/2013
Applicant	Integrated Prepaid Solutions, Inc. 705 Water Street Waxahachie, OH 75165 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: Computer software, namely, electronic financial platform that accommodates multiple types of payment and debt transactions in an integrated mobile phone, PDA, and web based environment
Class 036. All goods and services in the class are opposed, namely: Debit card services; Money transfer; On-line prepaid card services

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
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Registration Date	NONE
Word Mark	MOTUS
Goods/Services	Computer software, namely, electronic financial platform that accommodates multiple types of payment and debt transactions in an integrated mobile phone, PDA, and web based environment. Bill payment services provided through a website; Debit card services; Electronic commerce payment services, namely, establishing funded accounts used to purchase goods and services on the Internet; Electronic debit transactions; Electronic transfer of funds; Electronic transfer of money; Issuing prepaid debit cards; Merchant services, namely, payment transaction processing services; Money transfer; On-line prepaid card services; Pre-paid purchase card services, namely, processing electronic payments made through prepaid cards; Processing electronic payments made through prepaid cards; Providing stored value card services.

Related Proceedings	We will either oppose or move to cancel the MOTUS CARD mark (App. No. 85759426) depending on the progress of that application.
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Attachments	MOTUSOppositionText.pdf(194688 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Erin R. Ogden/
Name	Erin R. Ogden
Date	05/28/2013

OPPOSITION OF REGISTRATION OF APPLICATION SERIAL NO. 77/249,189

Motus Financial, Inc., a Wisconsin corporation, located at 100 Wilburn Rd., Suite 209, Sun Prairie, Wisconsin 53590 (the “Opposer”), believes it would be damaged by registration of MOTUS as shown in Application Serial No. 85/759421. Opposer hereby opposes the application for MOTUS as shown in Application Serial No. 85/759421.

The grounds of opposition and cancellation are as follows:

1. Opposer is the owner of the common law mark MOTUS with a date of first use at least as early as of July 15, 2011, and use through interstate commerce at least as early as of September 15, 2011. Opposer specializes in credit card processing. Opposer offers a complete suite of credit card processing products and services to suit a business’ need. Its credit card processing solutions assist merchants in accepting payments in all types of business environments, including health care, retail, mail-order, phone order, service industry, Internet, mobile and home based businesses. Going beyond credit card acceptance, Opposer provides debit card processing, customized Gift Card programs, electronic ACH, check verification, conversion and guaranty, as well as other services.
2. As a result of the skill and care exercised by Opposer in the conduct of its business, the uniform standards of high quality of Opposer’s goods and services offered and sold under Opposer’s MOTUS trademark, and the advertising, promotion, distribution, and acceptance by the trade and consuming public, goods bearing Opposer’s trademark have become well and favorably known with and substantial, valuable goodwill attached.
3. Due to the continuous and consistent use and widespread customer recognition of MOTUS as an indicator of source of Opposer’s goods and services, Opposer has common law rights to the mark MOTUS.

4. According to its applications for MOTUS and MOTUS CARD as shown in Application Serial No. 85/759426, Applicant is Integrated Prepaid Solutions, Inc. also known as IPS Corporation, a Texas corporation (“Applicant”), located at 705 Water Street Waxahachie, Ohio 75165 or 705 Water Street Waxahachie, Texas 75165.

5. However, Opposer can find no known city of Waxahachie, Ohio, or address of 705 Water Street Waxahachie, Ohio 75165. There is a dwelling located at 705 Water Street Waxahachie, Texas 75165.

6. More disturbing, Opposer can find no entity called Integrated Prepaid Solutions, Inc. or IPS Corporation in either Ohio or Texas. There is no record that Opposer can find of either company existing at all.

7. Upon information and belief, Opposer perpetrated fraud on the United States Patent and Trademark Office by attempting to register a mark by and through an entity that does not exist at an address that may or may not exist.

8. Applicant seeks to register the designation MOTUS and MOTUS CARD as trademarks through an intent to use applications with both filed on October 21, 2012, for the following:

International Class 9. Computer software, namely, electronic financial platform that accommodates multiple types of payment and debt transactions in an integrated mobile phone, PDA, and web based environment.

International Class 36. Bill payment services provided through a website; Debit card services; Electronic commerce payment services, namely, establishing funded accounts used to purchase goods and services on the Internet; Electronic debit transactions; Electronic transfer of funds; Electronic transfer of money; Issuing prepaid debit cards; Merchant services, namely, payment transaction processing

services; Money transfer; On-line prepaid card services; Pre-paid purchase card services, namely, processing electronic payments made through prepaid cards; Processing electronic payments made through prepaid cards; Providing stored value card services.

9. Upon information and belief, Applicant has yet to have bona fide commercial use of the MOTUS mark in commerce and merely attempts to reserve a right in the mark in its application for a company that does not even exist.

10. The goods in Class 9, covered by Applicant's applications if the marks are used, will be encountered by the same or similar class of purchasers as those who are interested in or familiar with the goods in Class 9 that are promoted, offered, and provided by Opposer under the well-known MOTUS mark.

11. The services in Class 36, covered by Applicant's applications if the marks are used, will be encountered by the same or similar class of purchasers as those who are interested in or familiar with the services in Class that are promoted, offered, and provided by Opposer under the well-known MOTUS mark.

12. Opposer's uses its mark, MOTUS, as it sells the goods and services of web-based account management, iPhone, iPad and Android solutions, Quickbooks consulting, check guaranty services, customized gift cards, web browser-based terminals, e-commerce services, mobile payment services, next-day funding options services, and card processing services as reflected by their marketing material and website (Exhibit A).

13. The goods and services on which Applicant's claimed marks are intended to be used and those goods and services currently sold by Opposer will be advertised, promoted, offered, and distributed through the same or similar channels of trade to the same or similar classes of purchasers.

14. The same or similar goods, channels of trade, and classes of purchasers of Opposer and Applicant will be likely to cause confusion, cause mistake, or deceive purchasers, all to the damage of Opposer.

15. Applicant's claimed mark MOTUS is identical and so closely resembles Opposer's mark MOTUS currently in use as to be likely to cause confusion, cause mistake, and to deceive with consequent injury to Opposer and the public when applied to Applicant's goods and falsely suggests a connection with the Opposer and its goods.

16. Applicant's claimed mark MOTUS so closely resembles Opposer's mark MOTUS currently in use that, if and when Applicant uses its claimed mark, potential purchasers are likely to mistakenly believe that Opposer is the source of Applicant's goods or that Opposer has authorized, sponsored, approved of, or in some other manner associated itself with the goods of Applicant, and such use will create a likelihood of confusion, deception or mistake, all to the damage of Opposer.

17. If Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* right to the exclusive use of Applicant's mark. This is harmful to Opposer, who actually used MOTUS on and in connection with the relevant goods and services at an earlier date. Applicant's registration thus would confuse the trade and public, be a source of damage and injury to Opposer, and diminish the significant investment Opposer has made in Opposer's mark.

18. By reason of the foregoing, Opposer will be damaged by the registration of Applicant's claimed trademark.

19. Upon information and belief, Applicant did not have a bona fide intention to use the mark in commerce on the specified goods when it filed its application covering MOTUS for the goods and services specified therein.

20. Opposer has built a large amount of goodwill and public and marketplace awareness and knowledge of source in its mark through extensive and wide-scale advertising, press releases, newspaper and magazine articles, direct mail and e-mail of marketing, advertisements, and information, and sales using the mark throughout the United States.

Due to Applicant's fraud on the United States Patent and Trademark Office by claiming to be an entity that does not exist at an address that may or may not exist, Motus Financial, Inc., respectfully prays that its opposition for MOTUS as shown in Application Serial No. 85/759421 for registration be sustained and that the registration sought by Applicant be refused.

MURPHY DESMOND S.C.

Attorneys for Opposer, Motus Financial, Inc.

/s/ Erin R. Ogden

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